

THE IOWA DISTRICT COURT FOR POLK COUNTY

SHERILYN FASIG SNITKER,

Petitioner,

vs.

**SEABRIGHT INSURANCE COMPANY;
BIRDNOW ENTERPRISES, INC. d.b.a.
BIRDNOW MOTORS**

Respondents.

Case No. CVCV059719

**ORDER RE: PETITION FOR JUDICIAL
REVIEW**

The court has before it petitioner, Sherilyn Fasig-Snitker’s (“Snitker” or “Petitioner”) petition for judicial review of the Iowa Workers’ Compensation Commissioner’s (“commissioner” or “agency”) appeal decision filed January 10, 2020. Seabright Insurance Company (“Seabright”) and Birdnow Enterprises Inc. (“Birdnow”) resisted the petition. A hearing was held on May 8th, 2020. Laura Schultes appeared as counsel for Snitker. L. Tyler Laflin appeared as counsel for Birdnow and Seabright. The court having reviewed the memorandums of law filed by the parties, the certified administrative record and having heard arguments of counsel finds and orders as follows.

The commissioner in his decision adopted and affirmed the arbitration decision of the deputy workers’ compensation commissioner which was filed on July 18, 2018. In the decision the commissioner found Snitker sustained 40 percent industrial disability as a result of her work injury which occurred on February 8, 2013. The commissioner affirmed the deputy’s finding that

petitioner is not permanently and totally disabled as a result of her work injury. The commissioner ordered the respondents to pay petitioner's cost of the arbitration proceeding.¹

Snitker filed her petition for judicial review on February 7, 2020. She filed her memorandum of law in support of her petition on March 13, 2020. Respondents filed their memorandum of law in resistance to the petition on April 13, 2020. Snitker filed a reply brief on April 22, 2020.

Snitker contends the commissioner's findings of fact determining her industrial loss, is not supported by substantial evidence in accordance with Iowa Code section 17A.19(10). She also alleges the commissioner's application of law to the facts is irrational, illogical, and wholly unjustifiable in regards to the legal principles that govern the industrial disability analysis.

The parties meticulously outlined their arguments in their memorandums of law supporting their arguments with appropriate references to the administrative record. The parties also provided this court with the applicable law for its review. Due to the parties conscientious and meticulous recitation of the facts and applicable law the court does not restate those references here.

As to whether there is substantial evidence to support the commissioner's decision the court is required to review the full administrative record.² The court must consider the evidence that supports the challenged finding, as well as the evidence that detracts from it.³ In reviewing the record, the court is not to decide whether there is evidence to support a decision the commissioner did not make, but instead to determine if there is substantial evidence to support

¹ Appeal Decision, at 2 (Iowa Workers' Compensation Comm'n Jan. 10, 2020).

² *Meyer v. IBP*, 710 N.W.2d 213, 219 (Iowa 2006).

³ Iowa Code § 17A.19(10)(f)(3); *Wal-Mart Stores, Inc. v. Caselman*, 657 N.W.2d 493, 499 (Iowa 2003).

the decision made by the commissioner.⁴ Even if the court could have reached a different conclusion, the court is not to reverse the decision unless the commissioner's decision is not supported by substantial evidence.⁵

When the challenge is to the commissioner's application of the law to the facts, the court is to reverse only if the commissioner's decision is irrational, illogical or wholly unjustifiable.⁶ In reviewing the commissioner's decision the court is to give deference to the commissioner's determination but less deference than is given to the commissioner's findings of fact.⁷

In addition, the court is mindful of the following principles of law that govern the court's review of this issue. The determination of industrial disability (whether a claimant is totally and permanently disabled) is a multifactorial analysis that includes:

the employee's medical condition prior to the injury, immediately after the injury, and presently; the situs of the injury, its severity and the length of the healing period; the work experience of the employee prior to the injury and after the injury and the potential for rehabilitation; the employee's qualifications intellectually, emotionally, and physically; earnings prior and subsequent to the injury; age; education; motivation; functional impairment as a result of the injury; inability, because of the injury, to engage in employment for which the employee is fitted; loss of earnings caused by a job transfer for reasons related to the injury; and the employer's refusal to give any sort of work to an impaired employee.⁸

Likewise, "total disability does not mean a state of absolute helplessness."⁹ Permanent total disability occurs "when the injury wholly disables the employee from performing work that the employee's experience, training, intelligence, and physical capacities would otherwise permit the employee to perform."¹⁰

⁴ *Musselman v. Cent. Tel. Co.*, 154 N.W.2d 128, 130 (Iowa 1967).

⁵ *Christiansen v. Iowa Bd. of Educational Examiners*, 831 N.W.2d 179, 192 (Iowa 2013).

⁶ *Larson Mfg. Co., Inc. v. Thorson*, 763 N.W.2d 842, 850 (Iowa 2009).

⁷ *Id.*

⁸ *IBP, Inc. v. Al-Gharib*, 604 N.W.2d 621, 632-633 (Iowa 2000).

⁹ *Id.* at 633.

¹⁰ *Id.*

The issue before the court is whether substantial evidence supports the commissioner's decision of forty percent industrial disability. As noted this is a multifactorial test. While the evidence may have supported a higher percentage the court's role is not to substitute its judgment for the commissioner's provided it is supported by substantial evidence.

After a careful review of the administrative record, the court finds the commissioner's decision and that of the deputy commissioner are supported by substantial evidence in the record. The decisions made by the commissioner and the deputy commissioner were well-reasoned analyses of the record. The deputy commissioner specifically referenced the administrative record in making her fact-findings. The deputy commissioner engaged in a careful and methodical analysis of the medical record and vocational record presented to her.

Based on the evidence provided by Dr. Miller, Snitker's work experience, her ability to work, the availability of sales positions, observations of Snitker by the deputy commissioner, Strickland's opinions as to lost earning capacity and available occupations, the invalid functional capacity evaluation (FCE), the deputy commissioner determined that Snitker did not sustain a permanent total disability. The deputy commissioner's specific findings of fact are supported by the evidence in the record. Based upon the court's review of the record there is substantial evidence to support the decision reached by the commissioner. Additionally, the commissioner's decision was not irrational or illogical nor wholly unjustifiable. Finally, the commissioner did not incorrectly interpret the statutes and caselaw in finding Snitker sustained a 40 percent industrial loss.

IT IS THEREFORE ORDERED the commissioner's decision of January 10, 2020 is **AFFIRMED**.



State of Iowa Courts

Type: OTHER ORDER

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CVCV059719 SHERILYN F SNITKER VS BIRDNOW ENTERPRISES ET AL

So Ordered

A handwritten signature in black ink, appearing to read 'L. P. McLellan'. The signature is written in a cursive style and is positioned above a horizontal line.

Lawrence P. McLellan, District Court Judge,
Fifth Judicial District of Iowa